

Exhibit A

Smith, Samantha E.

From: Cottreau, Steven T. <scottreau@jonesday.com>
Sent: Monday, March 23, 2020 2:45 PM
To: Strong, Bruce; Goldman, Jerry S.
Cc: DeGenaro, Stephen M.; Pritsker, Gabrielle E.; Marshall, C. Kevin; Smith, Samantha E.
Subject: RE: O'Neill Class Certification Briefing

EXTERNAL SENDER

Dear Bruce,

Thank you for your email. I agree with portions of your summary of the call, but I think you have misunderstood the call in several respects. I hate to quibble, but because you've gone through the trouble to memorialize our short call, I have noted our key corrections to your summary below.

1. We did not state that we were seeking to file a sur-reply due to page limits. We simply noted that class certification is a significant issue that we have only addressed in 25 pages previously. Because the O'Neill Plaintiffs' opening brief did not address the flaws in the class definition, we did not see your position on those flaws until your Reply brief. As a result, we have not had a chance to meaningfully respond to your arguments, a dialogue from which the Court may benefit.
2. You stated that I did not give any other reason for a surreply. That is not true. As we discussed, the Court may not hold oral argument in light of Covid-19. As a result, the Court may benefit from our thoughts to your Reply arguments.
3. You stated that "We then asked whether the al Baraka Defendants intended to attach their surreply to their letter to the Court before being authorized to file it by Judge Netburn." That also is inaccurate. We volunteered (unprompted by you) that we planned to attach a proposed sur-reply.
4. You stated that "You said that the practice in this MDL varied" about whether to attach a draft surreply. You, however, omitted that I also noted that in my experience on the case (which is more limited than Jerry's!), I believed that generally parties previously attached sur-replies to motions seeking to file them or simply filed them without seeking permission. I asked you if you were aware of any instances when a party sought permission after briefing to file a surreply without attaching the draft surreply. You did not provide any examples.

We will note your opposition in our motion.

Stay safe!

Best,
Steve

Steven T. Cottreau
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scottreau@jonesday.com

From: Strong, Bruce <Bstrong@andersonkill.com>
Sent: Monday, March 23, 2020 12:32 PM
To: Cottreau, Steven T. <scottreau@jonesday.com>; Goldman, Jerry S. <Jgoldman@andersonkill.com>
Cc: DeGenaro, Stephen M. <sdegenaro@jonesday.com>; Pritsker, Gabrielle E. <gpritsker@jonesday.com>; Marshall, C. Kevin <ckmarshall@JonesDay.com>; Smith, Samantha E. <ssmith@andersonkill.com>
Subject: RE: O'Neill Class Certification Briefing

Steve,

As you indicated on the call, the *al Baraka* Defendants will seek leave to file a 4-5 page surreply in further opposition to the *O'Neill* Plaintiffs' class motion. We advised that Judge Netburn generally disfavors surreplies and therefore asked why you believed the *al Baraka* Defendants should be entitled to one here. You responded that due to page limits, the *al Baraka* Defendants did not have sufficient space to elaborate on their arguments in their opposition. You also stated that since many arguments were raised in defendants' opposition for the first time, plaintiffs' reply brief was the first time that defendants were able to see plaintiffs' responses to those arguments. You did not indicate any other reason for seeking leave to file a surreply. Accordingly, we stated that we opposed the filing of defendants' surreply. We then asked whether the *al Baraka* Defendants intended to attach their surreply to their letter to the Court before being authorized to file it by Judge Netburn. You said that the practice in this MDL varied and that you intended to file the proposed surreply with the letter to the Court. We stated that if defendants attach a surreply, plaintiffs would move to strike it. We also stated that you should let the Court know of our opposition to your requests and that plaintiffs would respond by letter to the Court to any request to file a surreply within 24 hours.

Please all stay safe.

Best,

Bruce



Bruce Strong
Attorney

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[Biography](#)

From: Cottreau, Steven T. [<mailto:scottreau@jonesday.com>]
Sent: Sunday, March 22, 2020 10:54 AM
To: Goldman, Jerry S.
Cc: DeGenaro, Stephen M.; Pritsker, Gabrielle E.; Marshall, C. Kevin; Strong, Bruce; Smith, Samantha E.
Subject: RE: O'Neill Class Certification Briefing

Jerry,

Let's plan. To speak at 11am ET.

Best,
Steve

From: Goldman, Jerry S. <Jgoldman@andersonkill.com>

Date: Saturday, Mar 21, 2020, 3:00 PM

To: Cottreau, Steven T. <scottreau@jonesday.com>

Cc: DeGenaro, Stephen M. <sdegenaro@jonesday.com>, Pritsker, Gabrielle E. <gpritsker@jonesday.com>, Marshall, C. Kevin <ckmarshall@JonesDay.com>, Strong, Bruce <Bstrong@andersonkill.com>, Smith, Samantha E. <ssmith@andersonkill.com>

Subject: Re: O'Neill Class Certification Briefing

Steve.

I'd like to take you up on a brief call late Monday am- say 11 1130 12 1230 - to better understand your request

If any of them work, I'll send a dial in.

Jsg

Sent from Jerry's iPhone

Sorry for any typos

On Mar 20, 2020, at 5:21 PM, Cottreau, Steven T. <scottreau@jonesday.com> wrote:

EXTERNAL SENDER

Thanks and understood.

Steven T. Cottreau

Partner

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From: Goldman, Jerry S. <Jgoldman@andersonkill.com>

Sent: Friday, March 20, 2020 5:19 PM

To: Cottreau, Steven T. <scottreau@jonesday.com>

Cc: DeGenaro, Stephen M. <sdegenaro@jonesday.com>; Pritsker, Gabrielle E. <gpritsker@jonesday.com>; Marshall, C. Kevin <ckmarshall@JonesDay.com>

Subject: RE: O'Neill Class Certification Briefing

I'll let you know Monday

We do, you know, all have those oral argument constraints.

jsg

From: Cottreau, Steven T. [<mailto:scottreau@jonesday.com>]

Sent: Friday, March 20, 2020 5:18 PM

To: Goldman, Jerry S.

Cc: DeGenaro, Stephen M.; Pritsker, Gabrielle E.; Marshall, C. Kevin

Subject: O'Neill Class Certification Briefing

EXTERNAL SENDER

Dear Jerry,

I hope that you are surviving the scourge of Covid-19.

The O'Neill Defendants would like to seek leave to file a brief sur-reply regarding class certification, not to exceed 5 pages. In accordance with Judge Netburn's Individual Rules of Practice, we would like to know whether you will provide your consent. We are happy to confer by phone if you think that is necessary.

Our anticipated sur-reply is prompted by, and would focus on, certain points raised in your reply. We also are taking into account the constraints on oral argument due to Covid-19, including as set out by the Court today in its new operational protocols.

Can you please let us know your position on our motion by 2:30 p.m. ET on Monday?

Have a nice weekend.

Best,

Steve

Steven T. Cottreau

Partner

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